

Message Text

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TO AMEMBASSY BONN PRIORITY
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E.O. 11652: N/A

TAGS: ETRD, EAIR, WG, US

SUBJECT: ANTITRUST - LUFTHANSA INDICTMENT

REF: (A) STATE 014163, (B) BONN 1524

1. TEXT OF FRG NOTE DELIVERED JANUARY 26 CONCERNING
ALLEGED ANTITRUST VIOLATIONS BY LUFTHANSA IS AS FOLLOWS:

QUOTE THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY
PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE
AND HAS THE HONOR TO REFER TO THE LETTER OF THE DEPARTMENT
OF JUSTICE OF JANUARY, 1977, WHICH WAS TRANSMITTED TO
THIS EMBASSY BY THE DEPARTMENT OF STATE - OFFICE OF
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BUSINESS PRACTICES - ON JANUARY 20, 1977 BY TELEPHONE:

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY IS
SURPRISED THAT THE DEPARTMENT OF JUSTICE CONSIDERS
ASKING A GRAND JURY ON SHORT NOTICE - I.E., BEFORE
JANUARY 31, 1977 - TO CRIMINALLY INDICT THE MENTIONED
GERMAN CARRIER, LUFTHANSA GERMAN AIRLINES, FOR A

"MISDEMEANOR VIOLATION OF SECTION 1 OF THE SHERMAN ACT",
WITHOUT PROVIDING THE OPPORTUNITY FOR THE GOVERNMENT
OF THE FEDERAL REPUBLIC OF GERMANY OR THE GERMAN AIR CARRIER
TO EXPLAIN THEIR POSITION AND TO CLARIFY THE MATTER.

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FINDS
THIS EVEN MORE DIFFICULT TO COMPREHEND, SINCE THE UNDER-
LYING CASE FOR THE ALLEGED VIOLATION BY THE MENTIONED
GERMANY CARRIER CONSISTS OF US-MILITARY-SPECIAL FARES,
WHICH HAVE BEEN INTRODUCED BETWEEN OUR COUNTRIES AT THE
INSTIGATION OF THE GOVERNMENT OF THE UNITED STATES OF
AMERICA. AT THAT TIME, THE US CARRIERS, PAN AM AND TWA
REFERRED TO A GOVERNMENT REQUEST BY THE US-DEPARTMENT OF
DEFENSE OF DECEMBER, 1971, BY WHICH SPECIAL US-MILITARY
RATES WERE SUPPOSED TO BE INTRODUCED EFFECTIVE FEBRUARY 1,
1972. THESE TARIFFS WERE SUBSTANTIALLY LOWER (7 TO 20
PERCENT) THAN THE TARIFFS AGREED UPON BY IATA FOR THIS
PASSENGER GROUP (IATA RESOLUTION NO. 095 A).

THE GERMAN CIVIL AVIATION AUTHORITY IN THE FIRST INSTANCE
DID NOT GIVE APPROVAL FOR THESE TARIFFS WHICH IS NECESSARY
ACCORDING TO ARTICLE 11, (B), OF THE GERMAN-AMERICAN
AVIATION TREATY. THIS POSITION WAS CONTAINED IN A
LETTER DATED JANUARY 26, 1972 BECAUSE THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY HELD AND HOLDS
THE VIEW THAT IF THERE HAS BEEN AN IATA-AGREEMENT ON A
TARIFF FOR A SPECIFIC PASSENGER GROUP, WHICH HAS BEEN
APPROVED BY BOTH SIDES, THERE IS NO ROOM FOR A CHANGE OF
SUCH TARIFF BY UNILATERAL DECLARATION ACCORDING TO
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ARTICLE 11, (C) AND (D) OF THE BILATERAL. ONLY AFTER
VERY INTENSIVE EFFORTS BY THE US-EMBASSY IN BONN AT THE
FOREIGN OFFICE OF THE FEDERAL REPUBLIC OF GERMANY, THE
FEDERAL CIVIL AVIATION AUTHORITY AGREED ON FEBRUARY 2,
1972 - WHILE MAINTAINING ITS FUNDAMENTAL LEGAL POSITION -
TO THE IMPLEMENTATION OF THESE SPECIAL TARIFFS EFFECTIVE
FEBRUARY 1, 1972. IN THE MEANTIME, THE TARIFFS
HAD BEEN APPROVED BY THE CIVIL AERONAUTICS BOARD. THE
CONSENT WAS GRANTED IN THE INTEREST OF US MILITARY
PERSONNEL STATIONED IN THE FEDERAL REPUBLIC OF GERMANY,
AND UNDER THE CONDITION THAT THE IMPLEMENTATION OF THE
SAME TARIFFS BY THE GERMAN CARRIER WOULD BE APPROVED
BY THE GOVERNMENT OF THE UNITED STATES, AND FURTHERMORE,
THAT THE CARRIERS OF BOTH COUNTRIES WOULD CONTINUE THEIR
EFFORTS TO REACH AN OVERALL AGREEMENT IN THE FRAMEWORK
OF IATA ON GENERALLY APPLICABLE TARIFFS FOR MEMBERS OF
THE US MILITARY FORCES. LETTERS WITH RESPECT TO THIS
POSITION WERE ADDRESSED TO PAN AM AND TWA ON JANUARY 26
AND FEBRUARY 2, 1972 RESPECTIVELY AND HAVE BEEN TRANS-

MITTED TO THE EMBASSY OF THE UNITED STATES OF AMERICA IN
BONN ON FEBRUARY 21, 1972.

THESE SPECIAL TARIFFS HAVE BEEN IN EFFECT UNCHANGED -
APART FROM MINOR CHANGES IN 1973 FOR THE COMPENSATION OF
THE US-DOLLAR-DEVALUATION IN 1973 AND FOR INCREASES IN

FUEL PRICES IN 1974 - SINCE THAT TIME UNTIL TODAY BESIDE
THE FORMER IATA SPECIAL TARIFFS. ACCORDING TO STATEMENTS
OF LUFTHANSA GERMAN AIRLINES, WHICH APPEAR CREDIBLE,
THERE HAVE BEEN NO AGREEMENTS ON THE INCREASE OF THESE
TARIFFS, WHICH HAVE BEEN IMPOSED BY THE US-GOVERNMENT
BETWEEN THE US CARRIERS AND LUFTHANSA.

WHEN INCREASING THESE TARIFFS BY 6 PERCENT IN 1973,
LUFTHANSA GERMAN AIRLINES HAS BEEN CONVINCED THAT THE
AGREEMENT WHICH HAD BEEN REACHED IN IATA TO INCREASE
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ALL US-DOLLAR-TARIFFS AS A BASE FOR INTERNATIONAL
AVIATION FARES BY 6 PERCENT TO COMPENSATE FOR CURRENCY
LOSSES AS A RESULT OF THE US-DOLLAR-DEVALUATION, WAS
APPLICABLE TO ALL NORTH ATLANTIC FARES, INCLUDING US-
MILITARY-SPECIAL-TARIFFS.

IN REFERENCE TO TWO INCREASES OF THE US-MILITARY-SPECIAL-
TARIFFS IN 1974, APPLIED FOR BY THE US-CARRIERS TO
OFFSET COST INCREASES FOR AVIATION FUEL, LUFTHANSA HAS
ONLY BEEN GRANTED TO APPLY THESE TARIFFS, WHICH HAD BEEN
APPROVED FOR THE US-CARRIERS, TO THE SAME EXTENT. WHILE
GRANTING THIS PERMISSION, THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY STRESSED THE POINT THAT THE
GERMAN CARRIER SHOULD BE ENABLED TO PARTICIPATE IN THIS
SPECIAL SERVICE ON THE BASIS OF THE SAME CONDITIONS AS THE
US-CARRIERS.

IN CASE THAT THESE DECLARATIONS DO NOT CONVINCE THE
DEPARTMENT OF JUSTICE, THAT THE GERMAN CARRIER CANNOT BE
FOUND IN VIOLATION OF US LAWS, AND IF THE DEPARTMENT OF
JUSTICE SO DESIRES, THE HEAD OF THE TARIFF DEPARTMENT OF
LUFTHANSA GERMAN AIRLINES, MR. HOLSTEIN, WILL BE AVAILABLE
ON FRIDAY, JANUARY 28, 1977, IN WASHINGTON FOR AN EXCHANGE
OF INFORMATION. THE GOVERNMENT OF THE FEDERAL REPUBLIC
OF GERMANY WELCOMES THIS PREPAREDNESS OF LUFTHANSA GERMAN
AIRLINES AND CONSIDERS IT NECESSARY THAT THE DEPARTMENT OF
JUSTICE WILL GUARANTEE THAT SUCH AN EXCHANGE OF INFORMATION
WILL NOT LEAD TO AN ISSUANCE OF A SUBPOENA TO APPEAR
BEFORE THE GRAND JURY DURING MR. HOLSTEIN'S PRESENCE IN
WASHINGTON. WASHINGTON, JANUARY 25, 1977. UNQUOTE
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